

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ILUMINADA ORTEGA,

Plaintiff,

v.

CHAMPAGNE ROOM BK, INC d/b/a DRAFT
BARN d/b/a END ZONE SPORTS BAR &
LOUNGE; BROOKLYN DRAFT AND GRILL
INC d/b/a DRAFT BARN d/b/a END ZONE
SPORTS BAR & LOUNGE; ELITE HOLDINGS
AND MANAGEMENT, INC d/b/a ADRENALINE
BAR & LOUNGE d/b/a DRAFT BRN, d/b/a END
ZONE SPORTS BAR & LOUNGE; RUBEN
YEGHOYAN;
YEVGENIY TROFIMCHUK; and DIMITRI
YAGUDAEV; *Individually*,

Defendants.

21-cv-01125 (NGG-CLP)

**ANSWER ON BEHALF OF
CHAMPAGNE ROOM BK,
INC**

JURY TRIAL DEMANDED

Defendant CHAMPAGNE ROOM BK, INC, (hereinafter “Corp Defendant” or “Defendant”) by and through its counsel, The Law Office of Victor M. Feraru hereby answers the complaint of Plaintiff ILUMINADA ORTEGA and asserts these affirmative defenses.

PRELIMINARY STATEMENT

1. Denied. Paragraph 1 states conclusions of law to which no responsive pleading is required.

To the extent a responsive pleading is required, the allegations in Paragraph 1 are denied.

2. Denied.
3. Denied.
4. Denied.

JURISDICTION AND VENUE

5. Denied in part; admitted in part. Paragraph 5 contains conclusions of law to which no response is required. Defendant admits, however, that this Court has jurisdiction over the subject matter of this Complaint.

6. Denied in part; admitted in part. Paragraph 6 contains conclusions of law to which no response is required. Defendant admits, however, that this Court has jurisdiction over the subject matter of this Complaint.

7. Denied in part; admitted in part. Paragraph 7 contains conclusions of law to which no response is required. Defendant admits, however, that this Court has jurisdiction over supplemental New York State claims and New York City claims.

8. Denied in part; admitted in part. Paragraph 8 contains conclusions of law to which no response is required. Defendant admits, however, that venue is proper in this Court.

9. Denied. Paragraph 9 states conclusions of law to which no responsive pleading is required.

10. Denied. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10, and therefore they are deemed denied.

11. Denied. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11, and therefore they are deemed denied.

12. Denied. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13, and therefore they are deemed denied.

13. Denied. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13, and therefore they are deemed denied.

14. Denied in part; admitted in part. Defendant admits that Plaintiff's sex is "female."
Paragraph 14 contains conclusions of law to which no response is required.

15. Denied. Paragraph 15 contains conclusions of law to which no response is required.

16. Denied.

17. Denied.

18. Denied.

19. Admit.

20. Denied.

21. Denied.

22. Admits that Yeghoyan was a supervisor.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denies knowledge.

FACTUAL BACKGROUND

31. Denied.

- 32. Denied.
- 33. Denied.
- 34. Denied.
- 35. Denied.
- 36. Denied.
- 37. Denied.
- 38. Denied.
- 39. Denied.
- 40. Denied.
- 41. Denied.
- 42. Denied.
- 43. Denied.
- 44. Denied.
- 45. Denied.
- 46. Denied.
- 47. Denied.
- 48. Denied.
- 49. Denied.
- 50. Denied.
- 51. Denied.
- 52. Denied.
- 53. Denied.
- 54. Denied.

- 55. Denied.
- 56. Denied.
- 57. Denied as Defendant lacks knowledge.
- 58. Denied.
- 59. Denied.
- 60. Denied.
- 61. Denied.
- 62. Denied.
- 63. Denied.
- 64. Denied.
- 65. Denied.
- 66. Denied.
- 67. Denied.
- 68. Denied.
- 69. Denied.
- 70. Denied.
- 71. Denied.
- 72. Denied.
- 73. Denied.
- 74. Denied.
- 75. Denied.
- 76. Denied.
- 77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Defendant incorporates by reference its answers to the preceding Paragraphs as is set forth at length herein. Denied as to the factual allegations. As rest of Paragraph 80 contains conclusions of law, no response is required.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Defendant incorporates by reference its answers to the preceding Paragraphs as is set forth at length herein. Denied as to the factual allegations. As rest of Paragraph 80 contains conclusions of law, no response is required.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Defendant incorporates by reference its answers to the preceding Paragraphs as is set forth at length herein. Denied as to the factual allegations. As rest of Paragraph 80 contains conclusions of law, no response is required.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Defendant incorporates by reference its answers to the preceding Paragraphs as is set forth at length herein. Denied as to the factual allegations. As rest of Paragraph 80 contains conclusions of law, no response is required.

101. Denies information sufficient to form a belief.

102. Denied.

103. Denied.

104. Defendant incorporates by reference its answers to the preceding Paragraphs as is set forth at length herein. Denied as to the factual allegations. As rest of Paragraph 80 contains conclusions of law, no response is required.

105. Denies information sufficient to form a belief.

106. Denies.

107. Denies.

108. Denies.

109. Defendant incorporates by reference its answers to the preceding Paragraphs as is set forth at length herein. Denied as to the factual allegations. As rest of Paragraph 80 contains conclusions of law, no response is required.

110. Denies.

111. Denies.

112. Denies.

113. Denies.

DEFENSES AND AFFIRMATIVE DEFENSES

114. By pleading the following defenses, as provided for pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Defendant does not concede that it possesses or assumes the burden to prove each or any of them. Defendant maintains that Plaintiff retains the burden of proof on all matters necessary to state and sustain the claims asserted in the Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

115. Plaintiff has failed to state a claim for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

116. Plaintiff has failed to exhaust administrative remedies for some or all of their claims.

THIRD AFFIRMATIVE DEFENSE

117. The Court lacks jurisdiction over some or all of Plaintiff's claims.

FOURTH AFFIRMATIVE DEFENSE

118. Some or all of Plaintiff's claims are barred by the statute of limitations, laches, res judicata, collateral estoppel, consent, settlement and release, or accord and satisfaction.

FIFTH AFFIRMATIVE DEFENSE

119. The decisions Plaintiff challenge were based on reasonable business factors other than sex, race, age, nationality or any prohibited discriminatory means.

SIXTH AFFIRMATIVE DEFENSE

120. Plaintiff fails to state a prima facie case under any of the claims or causes of action asserted; in the alternative, assuming Plaintiff has stated a prima facie case, all conduct and actions on the part of Defendants' concerning Plaintiff was wholly based on legitimate, non-discriminatory, and non-retaliatory reasons.

SEVENTH AFFIRMATIVE DEFENSE

121. Without waiving any defenses, Defendants cannot be found to have violated Plaintiff's rights because it had policies designed to prevent and correct harassment and, upon notice of the alleged sexual assault in Plaintiff's complaint, and Plaintiff never notified Defendants about the alleged conduct.

EIGHTH AFFIRMATIVE DEFENSE

122. The Defendants cannot be found liable for the assault alleged in Plaintiff's complaint because it occurred off site of where the alleged "after party" or gathering was scheduled to have occurred and under circumstances over which the Defendants did not exercise substantial control.

NINTH AFFIRMATIVE DEFENSE

123. If Plaintiff sustained injuries and incurred any expenses as claimed, they were caused in whole or in part by the acts or omissions of others for whose intervening conduct or negligence the Defendants are not responsible.

TENTH AFFIRMATIVE DEFENSE

124. Injury to Plaintiff was not foreseeable as a matter of law.

ELEVENTH AFFIRMATIVE DEFENSE

125. The Defendants did not cause harm to Plaintiff.

TWELFTH AFFIRMATIVE DEFENSE

126. The Defendants did not engage in any affirmative conduct to place Plaintiff in danger.

THIRTEENTH AFFIRMATIVE DEFENSE

127. There was no unreasonable risk, and the Defendants did not intend to expose Plaintiff to an unreasonable risk.

FOURTEENTH AFFIRMATIVE DEFENSE

128. Without waiving any defenses, Plaintiff declined to utilize all support and resources made available to her, as was her right and her choice. To the extent utilizing such support and resources would have reduced any damages Plaintiff now seeks in this lawsuit, Defendants are not liable for such damages.

FIFTEENTH AFFIRMATIVE DEFENSE

125. Defendant denies that Plaintiff is entitled to recover any damages or other relief; in the alternative, upon information and belief, Plaintiff's damage claims are barred in whole or part by reason of their failure to mitigate the alleged damages and/or the doctrine of after-acquired evidence; further, in the alternative, to the extent Plaintiff has mitigated their damages, Defendant is entitled to a credit or set-off.

SIXTEENTH AFFIRMATIVE DEFENSE

126. Plaintiff is not entitled to a jury trial of the allegations of their Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

127. Defendant reserves the right to assert additional defenses, affirmative or otherwise, upon further investigation and discovery into the matters alleged. Defendant asserts all applicable statutory limitations with respect to Plaintiff's damage claims.

WHEREFORE, Defendant CHAMPAGNE ROOM BK, INC requests the Court enter judgment in its favor and against Plaintiff, that the Complaint be dismissed in its entirety with prejudice; that Defendant be awarded compensatory and punitive damages; that Defendant recover his costs and attorney's fees in this action, and for such other relief as may be appropriate.

Respectfully Submitted,

/s/ Victor M. Feraru

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